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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

CHARLES H. ADDIS; CINDI ADDIS,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the receipt that a charity provides to a donor for substantiating a tax-deductible charitable contribution must state speculative future benefits that might result to the donor if the donor makes voluntary charitable contributions in future years, even though the applicable statute and regulations provide that the charity's receipt shall only report any benefit from the contribution made in the current tax year.

PARTIES TO THE PROCEEDING

The caption of the case as it appears on the cover contains the names of all the parties.

CORPORATE DISCLOSURE STATEMENT

Not applicable. Neither Petitioner is a corporate entity.

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PETITION FOR WRIT OF CERTIORARI

Petitioners Charles Addis and Cindi Addis (the "Addises") respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the Ninth Circuit was entered on July 8, 2004, is reported at 374 F.3d 881, and is reproduced in the appendix hereto at Appendix A, p. 1a. The order denying Petitioners' Petition for Rehearing and Rehearing en Banc, Appendix C, p. 25a, was entered on September 21, 2004, and is not reported. The opinion of the United States Tax Court was entered on June 10, 2002, and is reproduced in the appendix at Appendix B, p. 13a.

JURISDICTION

The Ninth Circuit entered its judgment in this case on July 8, 2004, Appendix A, p. 1a, and denied the Petition for Rehearing en Banc on September 21, 2004, Appendix C, p. 25a. The jurisdiction of the United States Tax Court was based on 26 U.S.C. §§ 6213 and 7442. The jurisdiction of the Ninth Circuit was based on 26 U.S.C. §§ 7482 and 7483. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). This proceeding does not call into question the constitutionality of any Act of Congress or any statute of any State, therefore, the notification requirements of Rule 29.4(b) and (c) do not apply.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The statute at issue in this case is 26 U.S.C. § 170(f)(8) and is reproduced at Appendix D, p. 26a. The regulations at issue in this case are 26 C.F.R. §§ 1.170A-1(h)(4) and 1.170A-13(f)(6) and are reproduced at Appendix D, pp. 28a-29a.

STATEMENT OF THE CASE

The Ninth Circuit's decision in this case will impose a new and extremely difficult burden on charities (which is contrary to the statute and regulations) when a charity provides a receipt to a donor who may make future contributions, and will eliminate charitable tax deductions that such a donor clearly is entitled to claim under the tax laws.

A donor must obtain a written receipt from a charity to claim a charitable tax deduction for a contribution in excess of $250. The statute provides that on the receipt the charity must describe, and provide a good faith estimate of the value of, any goods or services which the charity provides in consideration for the "property" contributed. Internal Revenue Code (the "Code") § 170(f)(8). Similarly, the regulations require the charity to describe and value the consideration

"*for that payment.*" 26 CFR § 1.170A-13(f)(6) (emphasis added). (App. D at p. 29a).

In 1998 the Addises contributed $36,285 to a charity that was eligible to receive tax deductible contributions, and in 1999 the Addises contributed $36,000 to the charity. In 1998 and 1999, the charity received the charitable donation and paid premiums on a life insurance policy on the life of Mrs. Addis. In addition, each year the Addises paid $4,000 in non-deductible premiums to the insurance company for an interest in the same life insurance policy. The Addises and the charity were parties to an agreement under which the charity had certain rights in the life insurance policy and the Addises' trust had certain rights in the policy. The charity provided the Addises with timely receipts for their 1998 and 1999 contributions stating that the charity provided no goods or services to the Addises in consideration of their contributions.

Under established tax principles the cost or value of the Addises' interest in the policy in 1998 and 1999 (specifically, a portion of the death benefit) was less than the amount the Addises paid in non-deductible premiums for the policy. Under the language of the statute and the regulations, the Addises received no benefit in return for their charitable contribution in 1998 or 1999.

If the Addises had made no more payments to the charity after 1998, and no more premiums had been paid on the policy, regardless of what happened to the policy or Mrs. Addis, the Addises would not have received any benefit from their 1998 charitable contribution. Specifically, if no more premiums were paid after 1998 and the policy had been cancelled any time thereafter, the charity would have received all the policy cash surrender value, and the Addises would have received nothing. In addition, if no more premiums were paid after 1998, and the policy was not cancelled sooner, eventually the policy would have lapsed, and the Addises would have received nothing. Finally, if no more

premiums were paid and Mrs. Addis had died while the policy remained in force, the Addises would have received part of the death benefit, but based on established rates for insurance coverage, the Addises would have been entitled to a bigger death benefit if they had simply used the $4,000 they paid as non-deductible premiums to purchase a separate policy. Thus, the Addises received no benefit as a result of their contribution to the charity in 1998.

Similarly, with respect to the Addises' $36,000 payment to the charity in 1999, if no future contributions were made to the charity and no future premiums had been paid on the policy after 1999, there would have been no way for the Addises to receive a benefit.

The Addises made these payments to the charity to create a substantial endowment for charitable purposes, not to receive a benefit in return.

The IRS issued a notice of deficiency disallowing the Addises' charitable income tax deductions for their contributions to the charity. The Addises filed a petition with the U.S. Tax Court under 26 U.S.C. § 6213 to challenge the IRS's proposed deficiency. The Tax Court had jurisdiction under 26 U.S.C. § 7442.

The Tax Court concluded that the Addises were entitled to absolutely no charitable income tax deduction for their contributions to the charity on the grounds that the charity's receipt failed to satisfy the statutory requirement that the receipt must described, and provide a good faith estimate of, any goods or services provided in consideration for the contribution. The Tax Court found that "[the charity] provided consideration for [the Taxpayers'] contribution because . . . [the taxpayer] expected to receive 44 percent of the *death benefit* . . . ." (emphasis added). (App. B at p. 22a). That factual finding was clearly erroneous because under established insurance

rates, the Addises paid for their share of the death benefit with non-deductible premium payments.

The Addises appealed the Tax Court's decision to the Ninth Circuit Court of Appeals. The Ninth Circuit affirmed the result reached by the Tax Court, but rejected the Tax Court's analysis. The Ninth Circuit states that it will "clarify what constitutes the undisclosed benefit." (App. A at p. 9a).

The Ninth Circuit's rationale in finding a benefit back to the Addises is entirely different from the Tax Court's approach. The Ninth Circuit Opinion reaches its conclusion only by speculating on what might have happened if the Addises had made payments to the charity every year for *twelve years*. It uses the phrase "12 years" seven (7) times. The Ninth Circuit Opinion states, "The regulatory definition of consideration . . . calls for us to view all the benefits the Addises expected *from the split-dollar deal*" (emphasis added). (App. A at pp. 10a-11a). This is contrary to the statutory and regulatory limitation that the charity need only disclose and value goods and services the donor expects to receive "in exchange *for that payment*." (emphasis added). (App. D at p. 29a). Although the Ninth Circuit Opinion assumes that the Addises would make twelve annual contributions under "the split-dollar deal," the Addises were under no obligation to make future contributions (so there was no binding "deal"), and in fact the Addises stopped making contributions.

REASONS FOR GRANTING THE PETITION

I. THIS CASE RAISES AN IMPORTANT QUESTION THAT SHOULD BE DECIDED BY THIS COURT.

A. The Ninth Circuit's Opinion Will Impact Charities and Donors When the Donor May Contribute in Future Years.

This is the first time that a court has interpreted 26 CFR § 1.170A-13(f)(6). This case may impact every charity and every donor. Whenever a charity will issue a receipt for a charitable donation from a donor who may contribute in future years, this issue may arise. The Ninth Circuit's approach will place a burden on charities contrary to the statute and regulations, and it will inappropriately prevent donors from claiming charitable contribution deductions when such deductions are otherwise permitted under the tax law. For those reasons, the U.S. Supreme Court should decide this important issue.

The Ninth Circuit Opinion replaces the phrase "for that payment" in the regulation with the phrase "from . . . the deal." In preparing a receipt, the charity will now be obligated to disclose any benefit which the donor might expect *assuming* that the donor will make future contributions. Many charities anticipate (and solicit) on-going donations (such as multi-year pledges). The Ninth Circuit Opinion ignores the fact that if the donor makes future contributions in future years which result in a benefit to the donor, the charity can disclose that benefit in the receipts in those future years. The Ninth Circuit Opinion will require charities to disclose and value, in the year of the first donation, all the benefits which the donor may expect "from that payment" *and* from all future contributions "from . . . the deal." Requiring charities to speculate in this manner is contrary to the "for that payment" limitation. An example demonstrates the problems that will arise.

Example. A University establishes the "memento fund-raising campaign." If a donor contributes $500 in Year 1, she receives nothing in return in Year 1, but becomes a member of the "memento" club. If she makes a $500 contribution in Year #2 she will receive a pen with a value of $100. If she continues to contribute $500 each year thereafter, she will receive: in Year #3 a set of book-ends worth $200; in Year #4 a rocking-chair worth $300, and in Year #5, a desk worth $400. In the absence of the Ninth Circuit Opinion in this case, in Year #1, under Code §170(f)(8) and 26 CFR §1.170A-13(f)(6), the charity's receipt only needs to state whether the donor received or expects to receive consideration "for that payment"—in this example, the donor receives (and expects to receive) no benefit from the $500 payment in Year #1 because a "future payment" will be required to obtain a benefit. Each year thereafter, under Code §170(f)(8) and 26 CFR §1.170A-13(f)(6), the Charity can provide a receipt which states that the Charity received a gift of $500 and provided goods worth the value of the memento transferred in that year. Mementos to be transferred in future years would not need to be disclosed on the receipt because those would only be given in consideration for a future contribution. After five years, the five receipts from the charity, in total, would report contributions of $2,500 and consideration received or expected of $1,000. The donor in this example would be entitled to total charitable contribution deductions of $1,500 [$2,500-$1,000 = $1,500].

In contrast, under the analysis in the Ninth Circuit Opinion, in Year #1, the Charity would need to estimate the value of *all* the goods and services which the donor receives or expects to receive "from the . . . deal." The Charity's receipt in Year #1 would have to state that the donor made a $500 donation but received or expects to receive goods with a value of $1,000 (the sum of the goods expected to be provided in Years #2 though #5). Every year thereafter, the Charity would need to state in the receipt that the sum of the

goods expected to be received in the future exceeds the current year's contribution, so that the donor would be entitled to zero tax deduction, except in Year #5 when the Charity's receipt could state that the donor expects to receive a memento worth $400 in consideration for a $500 contribution. Thus, over five years, the donor would contribute $2,500, and would only be entitled to deduct $100. The Ninth Circuit Opinion will lead to absurd results.

Similar situations will arise whenever any donor makes a multi-year pledge to a charity with the expectation of receiving future benefits from the charity in future years for future donations. Thus, the Ninth Circuit Opinion will create serious problems for charities and their donors in many situations.

B. The Ninth Circuit's Opinion Will Impact Charities and Donors When a Mere Valuation Error Is Involved.

The draconian rule of Code § 170(f)(8)—that the donor is entitled to zero charitable deduction if the charity's receipt fails to provide a good faith estimate of the value of the goods provided in consideration for the donation—should only apply if the donor knew or had reason to know that the receipt was "unreasonable." 26 CFR § 1.170A-1(h)(4). (App. D at p. 28a). The Tax Court thought they found a benefit "for that payment" in the death benefit, but the Ninth Circuit appropriately rejects that finding. The Ninth Circuit Opinion fails to state a benefit "for that payment" (in 1998 or 1999), and instead only identifies a potential benefit that might arise from future payments—not from the payments made in 1998 or 1999. The statute and regulations require that the charity's receipt state the consideration "for that payment," and here neither court has found any consideration "for that payment" because there was no consideration "for that payment."

The fact that the Ninth Circuit disagreed with the Tax Court's analysis reflects the difficulty in finding a benefit to the Addises from their charitable donations, and demonstrates that even if the Addises' interpretation was incorrect, it was certainly reasonable. In addition, the charity concluded that there were no goods or services provided to the Addises "for that payment." In this situation, the taxpayers did not know, or have reason to know, that the receipt was "unreasonable." Thus, the Addises were entitled to rely upon the receipts from the charity in 1998 and 1999.

The Ninth Circuit's Opinion has the effect of applying the draconian rule of IRC §170(f)(8) when the charity merely makes a *valuation error*. In this case, the charity's receipt met the three statutory requirements of IRC §170(f)(8)(B). First, the receipt states the amount of cash contributed. Second, the receipt states "[w]hether the donee organization provided any goods or services in consideration . . . for [the contribution]"—here, the receipt stated that none was provided. Third, the receipt provides a "description and good faith estimate of the value of any goods . . . referred to [under the second requirement.]" Here, the charity evaluated the facts in good faith and concluded that the Addises received nothing back in return for their contributions. The Ninth Circuit Opinion basically concludes that because the charity made a valuation error, the entire deduction is lost. This problem could arise whenever a charity makes a valuation error in concluding that no goods or services were provided in return for a contribution.

CONCLUSION

For the reasons set forth above, the Court should grant this petition for certiorari.

Respectfully submitted,

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APPENDICES

APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed JUL. 8, 2004]

No. 02-73628
IRS No. 6628-00

CHARLES H. ADDIS; CINDI ADDIS,
Petitioners-Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

Appeal from a Decision of the
United States Tax Court

Argued and Submitted
March 25, 2004—San Francisco, California

Before: William C. Canby, Jr., John T. Noonan, and
Sidney R. Thomas, Circuit Judges.

Opinion by Judge Noonan

OPINION

NOONAN, *Circuit Judge*:

Charles H. Addis and his wife Cindi Addis appeal a Tax Court judgment denying them charitable contribution deductions for their payments to the National Heritage Foundation ("NHF") in 1997 and 1998. The central question is whether

26 U.S.C. § 170(0(8) disallows the deductions because the receipts substantiating the transfers to the NHF stated the Addises received no consideration though they expected the NHF to use their funds to pay part of the premiums on life insurance benefitting their trust pursuant to a split-dollar arrangement. We hold that section 170(0(8) bars the deductions and affirm the decision of the Tax Court.

FACTS

Charles Addis is a farm labor contractor and his wife Cindi Addis is a bookkeeper. They are the initial trustees and beneficiaries of the Charles H. Addis Family Trust, which they created on May 7, 1986. On the couple's deaths, the trust benefits their family members.

The NHF is a tax-exempt organization under 26 U.S.C. § 501(c)(3) and is eligible to receive tax-deductible contributions under 26 U.S.C. § 170 if tax code requirements are satisfied.

The questions we consider arise from the Addises' attempts to claim charitable contribution deductions for payments to the NHF in connection with a "charitable split-dollar" arrangement. "In general, a charitable split-dollar insurance transaction involves a transfer of funds by a taxpayer to a charity, with the understanding that the charity will use the transferred funds to pay premiums on a cash value life insurance policy that benefits both the charity and the taxpayer's family." I.R.S. Notice 99-36, 1991-1 C.B. 1284.

The split-dollar agreement

On October 10, 1997, Charles Addis wrote NHF president Dr. J. T. Houk stating the Addis trust was going to obtain life insurance on Cindi Addis and offering the NHF the option of buying an interest in the policy. Addis wrote: "The premium for National Heritage Foundation's interest under the option is $36,000.00 a year for 12 years."

On October 15, 1997, the NHF and the Addis trust entered an agreement governing the NHF's option of buying policy benefits from the Addis trust. The same day, Commercial Union Life Insurance Company issued a policy on Cindi Addis, then 44, to Charles Addis in his capacity as trustee. The initial death benefit was $991,789.00. The annual policy premium was $40,000.

Under the split-dollar agreement, the NHF had the option of paying $36,000—90% of the annual premium—for a "planned premium period" of twelve years. The NHF would then be entitled to $557,280—about 56% of the initial death benefit—if Cindi Addis died. The NHF's share of the death benefit was fixed even if the death benefit increased in value, as projected.

If the policy was surrendered and the NHF had made all its premium payments, the NHF would be entitled to its "termination account value"—the aggregate of all the premiums it had paid over the years minus the "cost" of its share of the death benefit measured using a factor set by the agreement called the "annual renewable term (ART)" rate.

Though the agreement contemplated payments by the NHF for twelve years, the NHF could opt to not pay all or any part of its premium portion. Depending on the shortfall and amount of prior payments, the NHF's benefits might be curtailed. Because the NHF used the Addises' $36,000 transfers to pay policy premiums in each of the tax years at issue, we discuss only the provisions that govern if the NHF paid its full portion.

Under the split-dollar agreement, the Addis trust would pay only 10% of the annual premium but be entitled to about 44% of the initial death benefit plus the projected increases in the death benefit over the years. The Addises retained the sole right to borrow on the policy or surrender the policy. If the Addises chose to surrender the policy, the Addis trust owned

the net cash surrender value less the NHF's termination account value.

If the policy death benefit fell below the amount sufficient to give the NHF its share of the death benefit, the Addis trust would pay the shortfall. Similarly, if the policy's net surrender value proved insufficient to provide the NHF with the amount to which it was entitled on surrender, the Addis trust would pay the shortfall.

Insurance marketer Lawrence D. Cronin testified: "The Addis case was actually the first case that we ever sold" involving the split-dollar concept. NHF President Houk testified that about 600 to 700 of the 4,500 foundations under the NHF aegis were based on similar split-dollar arrangements.

The money transfers by the Addises, premium payments by the NHF, and charitable contribution deduction claims

The same day that Charles Addis wrote to Houk proposing the split-dollar arrangement, the Addises paid $285 to the NHF to establish a charitable foundation under the NHF umbrella. The NHF sent the Addises a plaque and operations manual, as was the organization's practice with new foundations.

About a month after the NHF and the Addis trust entered the split-dollar agreement, the Addises sent a $36,000 check dated November 13, 1997 to the NHF. Charles Addis's cover letter stated in part:

> I am expecting you will use my donation to pay the premiums on the policy payable to my foundation. Although I realize you are under no obligation to do so, I request that you use my donation for that purpose.

In another check, also dated November 13, 1997, the Addises paid Commercial Union Life their premium portion of $4,000.

Charles Addis acknowledged in testimony before the Tax Court that the Addises expected the NHF to use their money to pay premiums pursuant to the split-dollar option agreement. Charles Addis explained that "they said they were going to make the payments." Charles Addis testified that if the NHF did not make the premium payments, "we would, obviously, contact them and say, why not, and if we weren't satisfied, we'd quit giving them money."

On November 19, 1997, the NHF credited the Addis Family Foundation with the Addises' $36,000 transfer, then debited the Addis account the same day to reflect that the $36,000 was sent to Commercial Union Life Insurance Company. The NHF's receipt substantiating the Addises' payment stated: "In accordance with IRS regulations, the National Heritage Foundation did not provide any goods or services to the donor in return for the contribution."

The Addises claimed a $36,285 charitable contribution deduction on their 1997 tax return for their transfer of funds to the NHF.

In October 1998, the Addises again made a $36,000 payment to the NHF and sent $4,000 to Commercial Union. The NHF again credited the Addis Family Foundation with $36,000 and debited the Addis account on the same day to reflect that the Addises' money was forwarded to Commercial Union. The NHF receipt substantiating the Addises' payment stated: "NHF did not provide any goods or services to the donor in return for the contribution."

The Addises claimed a $36,000 charitable contribution deduction on their 1998 tax return for their transfer of funds to the NHF.

The NHF ceased engaging in split-dollar arrangements after Congress in 1999 enacted 26 U.S.C. § 170(0(10), which disallows deductions when an organization uses transferred funds to pay premiums on life insurance "with respect to the

transferor" and levies a 100% excise tax on the premium payments. *See* Ticket to Work and Work Incentives Improvement Act of 1999, § 537, Pub. L. 106-170, § 537, 113 Stat. 1860, 1936. The Senate report regarding section 170(0(10) characterized charitable split-dollar arrangements as "an abuse of the charitable contribution deduction" where, "[i]n substance, the charity receives a transfer of a partial interest in an insurance policy, for which no charitable contribution deduction is allowed." S. Rep. No. 106-201, at 42 (1999). The denial of a deduction in section 170(0(10) was intended to be a clarification and restatement of preexisting law: "While there is no basis under present law for allowing a charitable contribution deduction in these circumstances," section 1700(10) was enacted to "stop the marketing of these transactions immediately." *Id.*

PROCEEDINGS BELOW

On March 20, 2000, the Addises received a notice of deficiency in their 1997 and 1998 federal income taxes due to the disallowance of the charitable contribution deductions they claimed for their transfers to the NHF. The notice stated that the Addises owed $13,062 for the 1997 tax year and $12,960 for the 1998 tax year.

The Addises petitioned the Tax Court for a redetermination. The Tax Court ruled that the deductions were disallowed by 26 U.S.C. § 1700(8) because the Addises' contemporaneous substantiation of their payments to the NHF inaccurately stated they received no consideration in exchange and did not reveal that they expected the NHF to use their funds to pay premiums on life insurance owned by their trust. *Addis v. Comm'r*, 118 T.C. 528, 536-37 (2002). The Tax Court found that

> Petitioners and NHF designed a scheme purporting to provide no benefits to petitioners in exchange (or consideration) for petitioners' payments. However, peti-

> tioners received substantial benefits from NHF under the life insurance policy. . . . [P]etitioners expected, and they told NHF that they expected, NHF to use their contributions for both their and NHF's benefit.

Id. at 536. The Tax Court did not reach the question of whether the deductions were also disallowed under 26 U.S.C. § 1700(3) because in substance the Addises had contributed a partial interest to the NHF.

The Addises appeal.

ANALYSIS

The consideration disclosure requirement

"[O]ur tax structure is based on a system of self reporting." *United States v. Bisceglia*, 420 U.S. 141, 145 (1975). "There is legal compulsion, to be sure, but basically the Government depends upon the good faith and integrity of each potential taxpayer to disclose honestly all information relevant to tax liability." Id.

The tax code provision we apply, 26 U.S.C. § 1700(8), aids in effective administration of the self-reporting and self-assessment system. Section 1700(8) provides in relevant part:

> (A) General rule.—No deduction shall be allowed under subsection (a) for any contribution of $250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organization that meets the requirements of subparagraph (B).
>
> (B) Content of acknowledgment.—An acknowledgment meets the requirements of this subparagraph if it includes the following information:
>
> (i) The amount of cash and a description (but not value) of any property other than cash contributed.

> (ii) Whether the donee organization provided any goods or services in consideration, in whole or in part, for any property described in clause (i)
>
> (iii) A description and good faith estimate of the value of any goods or services referred to in clause (ii) or, if such goods or services consist solely of intangible religious benefits, a statement to that effect.

26 U.S.C. § 1700(8). Congress enacted section 1700(8) to increase compliance with the rule that "where a charity receives a quid pro quo contribution (i.e, a payment made partly as a contribution and partly in consideration for goods or services furnished to the payor by the donee organization)," a charitable contribution deduction is limited to the amount exceeding the value of the consideration received. H. Rep. 103-111, at 785 (1993). Section 1700(8) "does not impose an information reporting requirement upon charities; rather it places the responsibility upon taxpayers . . . to request . . . substantiation from the charity of their contribution (and any good or service received in exchange)." H. Conf. Rep. 103-213, at 563-64 (1993).

The consideration disclosure requirement in section 1700(8) is threefold: the receipt must (1) state whether any goods and services were given as consideration; (2) describe the consideration provided, if any; and (3) give a good-faith estimate of the value of the consideration, if any, unless it consists solely of intangible religious benefits.

Goods and services that must be disclosed include "cash, property, services, benefits, and privileges . . . provided in a year other than the year in which the taxpayer makes the payment to the donee organization." 26 C.F.R. § 1.170A-13(0(5),(6). "A donee organization provides goods or services in consideration for a taxpayer's payment if, at the time the taxpayer makes the payment to the donee organization, the taxpayer receives or expects to receive goods or services in exchange for that payment." 26 C.F.R. § 1.170A-130(6).

The undisclosed benefit the Addises expected

The main dispute on appeal is whether the Addises received or expected to receive consideration for their payments to the NHF. The Tax Court ruled that the Addises' receipts incorrectly stated they received no consideration because they expected the NHF to make premium payments on a policy that would provide "substantial benefits" to their trust. *Addis v. Comm'r*, 118 T.C. 528, 536 (2002). We agree the receipts did not disclose the consideration the Addises expected. We clarify what constituted the undisclosed benefit.

The Addises' $36,000 payments were inducements for the NHF to take the split-dollar deal in the option agreement. The split-dollar insurance arrangement, which conferred benefits on the Addises disproportionate to their 10% premium payments, was the consideration the receipts failed to disclose.

The life insurance policy, with its benefits carved by the split-dollar agreement, was an investment instrument that the designer of the Addises' split-dollar plan, Lawrence D. Cronin, likened to a bond. But the split of investment returns compared to investment outlays was remarkably uneven. For twelve years, the NHF would put up 90% of the investment corpus but be entitled to none of the gains from the projected positive investment performance exceeding the NHF's guaranteed $557,280 in death benefits if Cindi Addis should die. If the Addises exercised their unilateral power to surrender the policy, the NHF would get back just the amounts it paid in, less the cost of its share of the death benefit—and with no compensation for lost interest and other investment value.

The Addises put up only 10% of the investment corpus but were entitled to all the projected gains in cash value and death benefit amount less the NHF's fixed $557,280 share of the death benefit or the return—without interest—of the NHF's premium outlays exceeding the cost of the NHF's share of the death benefit.

As with any investment, the life insurance policy would take time to build in value. The Addises expected time. Cindi Addis was just 44 and healthy at the start of the split-dollar deal. The Addises contemplated payments by the NHF for twelve years. From the start, Charles Addis wrote Houk: "The premium for National Heritage Foundation' interest under the option is $36,000.00 a year for 12 years."

After twelve years, according to Commercial Union projections, the death benefit would amount to more than $1.5 million. Despite paying 90% of the policy premiums each year, the NHF would only be entitled to its fixed $557,280—about 36% of the projected death benefit. The split-dollar agreement gave the Addises ownership of the remaining projected gain of close to a million—nearly twice the NHF's fixed share of the death benefit even though the NHF paid nine times more of the annual policy premium. After twelve years, the Addises would also own and be able to borrow on a disproportionate share of the projected cash value of the policy.

Why would the NHF take the uneven deal? The Addises' transfers of $36,000 constituted the inducement. The importance of the Addises' payments is highlighted by the fact that the NHF stopped participating in split-dollar deals after Congress imposed a 100% excise tax on a charity that, "in connection" with a transfer of funds, pays, has paid or is expected to pay "any premium" directly or indirectly on life insurance "with respect to the transferor." *See* 26 U.S.C. § 170(0(10). NHF Director Houk explained that section 170(0(10) "made our investment possibilities in these [split-dollar] programs unfavorable for us."

The Addises argue the proper inquiry is whether the policy benefits to which they were entitled in 1997 and 1998 were paid for entirely by their $4,000 partial premium payments. The regulatory definition of consideration, however, calls for us to view all the benefits the Addises expected from the

split-dollar deal. The regulatory definition of goods and services to embrace expected future consideration means that anticipated consideration must be disclosed even if not currently taxable as income. Each $36,000 payment by the Addises was "in exchange for" the NHF's participation in the split-dollar deal and continuation of the life of the arrangement.

We conclude the Addises expected consideration for their payments to the NHF. The Addises' receipt did not meet any of the three disclosure requirements of section 1700(8).

The Addises' unavailing invocation of exceptions to the consideration disclosure duty

The substantial consideration the Addises expected did not qualify for the exemption from the disclosure requirement for goods and services of "insubstantial value." *See* 26 C.F.R. § 1.170A-130(8). For the exemption to apply, the Addises' payments must have been made "in the context of a fundraising campaign in which the charity informs patrons how much of their payment is a deductible contribution" and "[t]he fair market value of all of the benefits received in connection with the payment" could not have exceeded $69 for the 1997 tax year and $71 for the 1998 tax year. *See* 26 C.F.R. § 1.170A-13(0(8)(A); Rev. Proc. 90-12, 1990-1 C.B. 471, *supplemented by* Rev. Proc. 96-59, 1996-2 C.B. 392; Rev. Proc. 97-57, 1997-2 C.B. 584.

The Addises argue that 26 C.F.R. § 1.170A-1(h)(4) permits them to rely on the NHF's receipt and conclude that any goods or services were insubstantial and need not be disclosed. The Addises cannot avail themselves of the protection of section 1.170A-1(h)(4). The regulation provides that "a taxpayer may rely on a contemporaneous written acknowledgment provided under section 170(0(8) . . . for the fair market value of any goods or services," unless "the taxpayer knows, or has reason to know, that such treatment is un-

reasonable." 26 C.F.R. § 1.170A-1(h)(4). The Addises were privy to all the details of the split-dollar arrangement. Indeed, Charles Addis wrote to the NHF to propose the benefits split. The Addises had reason to know that the consideration they expected was substantial.

The consequences: total denial of a deduction

Section 170(0(8) provides that when its substantiation provisions are not satisfied "[n]o deduction shall be allowed" for payments over $250. The plain language of the provision forbids a deduction to the Addises. Having failed to satisfy a provision intended to ensure compliance with the rule of partial charitable contribution deductions for quid pro quo payments, the Addises nonetheless seek to avail themselves of the quid pro quo rule and argue in the alternative for a partial deduction. A partial deduction is foreclosed by the statutory language. The deterrence value of section 170(f)(8)'s total denial of a deduction comports with the effective administration of a self-assessment and self-reporting system.

As the Tax Court's denial of deductions based on 26 U.S.C. § 1700(8) was proper, we have no occasion to reach the Commissioner's alternative contention that 26 U.S.C. § 1700(3) also bars the deductions because, in substance, the Addises gave the NHF a gift of a partial interest in property.

AFFIRMED.

APPENDIX B

UNITED STATES TAX COURT

[Filed JUN. 10, 2002]

Docket No. 6628-00

CHARLES H. ADDIS AND CINDI ADDIS,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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118 T.C. No. 32

Ps claimed charitable contribution deductions for their payments to NHF of $36,285 in 1987 and $36,000 in 1998. NHF, in turn, paid those amounts as premiums on a so-called charitable split-dollar life insurance policy on the life of P-W. NHF was entitled to receive 56 percent and Ps' family trust was entitled to receive 44 percent of the death benefit provided by the policy.

NHF was not required to pay the premiums for that policy. However, Ps reasonably expected NHF to do so because Ps' continued payments to NHF, and NHF's receipt of a death benefit, depended on NHF's paying the premiums.

NHF provided Ps with receipts for their payments which stated that NHF did not provide any goods or services to Ps in return for the payments. Ps claimed charitable contribution deductions for the entire amount of their payments to NHF.

Held: No part of Ps' payments to NHF is deductible as a charitable contribution to NHF because Ps did not meet the substantiation requirements of sec. 170(f)(8), I.R.C., and sec. 1.170A-13(f)(6), Income Tax Regs.

Steven Toscher and *Michel R. Stein*, for petitioners.

Lorraine Wu, for respondent.

COLVIN, *Judge*: Respondent determined deficiencies in petitioners' Federal income tax of $13,062 for 1997 and $12,960 for 1998.

Petitioners claimed charitable contribution deductions for their payment to the National Heritage Foundation (NHF) of $36,285 in 1987 and $36,000 in 1998, which NHF used to pay premiums on a life insurance policy for the life of petitioner Cindi Addis (Mrs. Addis). The insurance policy for Mrs. Addis was a so-called charitable split-dollar life insurance contract, under which NHF was entitled to receive 56 percent of the death benefit and petitioners' family trust was entitled to receive 44 percent. Respondent disallowed petitioners' charitable contribution deductions for all of their payments to NHF.

The sole issue for decision is whether petitioners may deduct their payments to NHF as charitable contributions.[1] We hold that they may not.

Unless otherwise indicated, section references are to the Internal Revenue Code. Rule references are to the Tax Court Rules of Practice and Procedure.

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[1] Petitioners contend that sec. 7491(a) requires respondent to bear the burden of proof on all issues in the case. We need not decide petitioners' contention because our findings and analysis do not depend on which party bears the burden of proof.

FINDINGS OF FACT

Some of the facts have been stipulated and are so found.

A. *Petitioners*

Petitioners lived in Bakersfield, California, when they filed their petition in this case. Charles H. Addis (petitioner) has been a farm labor contractor in the Bakersfield area for the last 20 years.

B. *Petitioners' Family Trust and Foundation*

1. *The Addis Family Trust*

On May 7, 1986, petitioners formed the Charles H. Addis Family Trust (Addis family trust). Petitioners are the trustors, first designee trustees, and initial beneficiaries of the Addis family trust. Under the trust instrument, petitioner's children and Mrs. Addis' parents or siblings become beneficiaries of the Addis family trust upon the deaths of petitioner and Mrs. Addis.

2. *NHF*

NHF is a section 501(c)(3) organization and is eligible to receive tax-deductible contributions under section 170(c)(2).

3. *The Addis Family Foundation*

On October 10,-1997, petitioners established a fund within NHF called the Addis family foundation. The purpose of the Addis family foundation is to fund Christian organizations and programs and individual evangelists. Mrs. Addis paid $285 to NHF to establish the Addis family foundation.

4. *The Life Insurance Policy on Mrs. Addis*

On October 10, 1997, petitioner wrote to Dr. J.T. Houk, the president of NHF, stating that the Addis family trust intended to buy an insurance policy on the life of Mrs. Addis and would grant NHF an option to acquire an interest in that policy.

On October 15, 1997, the Commercial Union Life Insurance Co. of America (Commercial Union Life) issued a life insurance policy on the life of Mrs. Addis (the life insurance policy or the policy) to petitioner. Mrs. Addis was 44 years old at that time. Petitioners owned the policy through the Addis family trust.[2]

The life insurance policy had a $40,000 annual premium and an initial death benefit of $991,789.

5. *The Death Benefit Option Agreement*

On October 15, 1997, petitioner, as trustee of the Addis family trust, and NHF entered into a death benefit option agreement (DBOA)[3] relating to the life insurance policy on the life of Mrs. Addis. Petitioner agreed to pay $4,000 of the $40,000 annual premium on the life insurance policy. Petitioner and NHF agreed that, if NHF paid $36,000 of the annual premium, NHF would become entitled to $557,280 of the death benefit under that policy. The DBOA provides that the Addis family trust and NHF each own a separate interest in the life insurance policy. The DBOA remained in effect throughout 1998.

6. *Petitioners' Payments to NHF and Commercial Union Life*

Around November 12, 1997, petitioners sent a check for $36,000 to NHF for their family foundation. Petitioner's letter to NHF stated that NHF was not required to use the payment to pay the premium on the life insurance policy, but that petitioner expected NHF to use the $36,000 payment to pay

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[2] Petitioners possess rights in the insurance policy solely through the Addis family trust.

[3] The DBOA is also referred to as a charitable split-dollar life insurance transaction.

those premiums. On November 13, 1997, petitioners paid Commercial Union Life their $4,000 portion of the $40,000 annual premium.

On November 19, 1997, NHF credited $36,000 to the Addis family foundation account. Simultaneously, NHF debited the Addis family foundation account $36,000 to pay NHF's portion of the life insurance policy premium. Also on that day, NHF paid its $36,000 portion of the life insurance policy premium to Commercial Union Life.

NHF sent a receipt for the 1997 contribution on behalf of the Addis family foundation which stated: "In accordance with IRS regulations, the National Heritage Foundation did not provide any goods or services to the donor in return for the contribution."

On October 21, 1998, petitioners paid $36,000 to NHF. The payment was in form unrestricted. Also on that day, petitioners paid Commercial Union Life their $4,000 portion of the life insurance policy premium. On October 27, 1998, NHF credited the Addis family foundation account with $36,000 and debited the account in the same amount to pay NHF's portion of the premium for the life insurance policy. Also on that day, NHF paid its $36,000 portion of the life insurance policy premium to Commercial Union Life. NHF provided petitioners with a receipt which stated that NHF provided no goods or services to petitioners in exchange for the payment.

Petitioners would have stopped making payments to NHF if NHF had not used petitioners' $36,000 payments to pay the premiums for the life insurance policy on Mrs. Addis.

7. *Rights Under the Commercial Union Life Insurance Policy*

a. *NHF's Rights*

The life insurance policy had an initial death benefit of $991,789. Under the-DBOA, NHF became-entitled to $557,280 of that amount when it paid the $36,000 premium to Commercial Union Life in 1997. NHF's portion of the death benefit was fixed at $557,280, even if the total death benefit increased under the policy.

Under the DBOA, NHF was guaranteed to receive either: (1) $557,280 when Mrs. Addis died; or (2) the termination account or cash surrender value of the insurance policy if the policy was terminated before Mrs. Addis died. NHF was guaranteed to receive the termination account value upon termination of the policy, i.e., the cumulative amount of premiums paid by NHF, less the cumulative cost of insurance that NHF was charged for its share of the death benefit.

b. *The Addis Family Trust's Rights*

In 1997, petitioners' family trust was entitled to receive $434,509[4] of the death benefit. Under the DBOA, the Addis family trust could borrow against the life insurance policy only to the extent that the policy's cash surrender values[5] exceeded the termination account value. The policy's cash surrender value did not exceed its termination account value during the years in issue.

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[4] Lawrence D. Cronin, the president of Cronin Insurance services, testified that petitioners' family trust was entitled to receive $424,509. The initial death benefit was $991,789. NHF was entitled to receive $557,280 of that amount, and petitioners' family trust was entitled to receive the remainder. The difference between $991,789 and $557,280 is $434,509.

[5] A policy's cash surrender value is its total gross cash value less any surrender charges imposed by the insurer on the surrender of the policy.

Under the DBOA, as long as the annual premium of $40,000 was paid, the Addis family trust was entitled to receive a death benefit of $434,509 plus any increase in the death benefit from the initial death benefit of $991,789.

Under the DBOA, the Addis family trust was required to pay the premiums on the policy if the cumulative premiums were inadequate to fund NHF's cost of insurance.

8. *Enactment of Section 170(f)(10) in 1999*

Petitioners stopped making payments to NHF after 1998. NHF no longer participates in charitable split-dollar life insurance arrangements because of the enactment in 1999 of section 170(f)(10),[6] which requires charities to pay a 100-percent excise tax on certain life insurance premium payments.

C. *Petitioners' Tax Returns and the Notice of Deficiency*

Petitioners claimed deductions for charitable contributions to NHF of $36,285 in 1997 and $36,000 in 1998. Respondent determined in the notice of deficiency that petitioners are not entitled to those deductions.

OPINION

Respondent contends that (1) petitioners may not deduct any of their payments to NHF because petitioners received a benefit from NHF, and that (2} petitioners may not deduct any of their payments to NHF because petitioners did not comply with the substantiation requirement of section 170(f)(8) and section 1.170A-13(f)(6), Income Tax Regs. Respondent contends that the contemporaneous written acknowledgment by NHF of petitioners' payments (1) incorrectly states that NHF provided no goods or services in exchange for petitioners' payments, and (2} contains no

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[6] Sec. 170(f)(10) was added to the Code by sec. 537(a) of the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. 106-170, 113 Stat. 1860, 1936, generally effective for transfers after Feb. 8, 1999.

description or good faith estimate of the value of the benefits petitioners received. To prevail on the charitable contributions issue, petitioners must overcome both of respondent's arguments. We will first consider respondent's second argument.

A. *Substantiation Requirement Under Section 170(f)(8)*

A taxpayer may not deduct any contribution of $250 or more unless he or she substantiates the contribution with a contemporaneous written acknowledgment of the contribution by the donee organization that meets the requirements of section 170 (f)(8)(B).[7] Sec. 170 (f)(8)(A). The donee's written acknowledgment must state the amount of cash and describe other property contributed, indicate whether the donee organization provided any goods or services in consideration for the contribution, and provide a description and good faith estimate of the value of any goods or services[8] provided by the donee organization. Sec. 170(f)(8)(B).

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[7] Sec. 170(f)(8) provides in part:

> (A) General rule.--No deduction shall be allowed under subsection (a) for any contribution of $250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organization that meets the requirements of subparagraph (B).
>
> (B) Content of acknowledgment.--An acknowledgment meets the requirements of this subparagraph if it includes the following information:
>
> (i) The amount of cash and a description (but not value) of any property other than cash contributed.
>
> (ii) Whether the donee organization provided any goods or services in consideration, in whole or in part, for any property described in clause (i).
>
> (iii) A description and good faith estimate of the value of any goods or services referred to in clause (ii) * * *.

[8] Goods or services include cash, property, services, benefits, and privileges. Sec. 1.170A-13(f)(5), Income Tax Regs.

B. *Definition of Consideration Under Section 1.170A-13(f)(6), Income Tax Regs.*

Petitioners contend that they did not receive consideration for, i.e., that they did not receive goods or services in exchange for, their $36,000 payments to NHF because NHF was not required to use those payments to pay the premiums on the life insurance policy. Petitioners contend that the fact that they expected NHF to invest in the life insurance policy was not consideration for purposes of section 170(f)(8). We disagree.

A donee organization provides goods or services in consideration for a taxpayer's payment if, at the time the donor makes the payment to the donee organization, the taxpayer receives or expects to receive goods or services in exchange for that payment. Section 1.170A-13(f)(6), Income Tax Regs., provides:

> (6) In consideration for. A donee organization provides goods or services in consideration for a taxpayer's payment if, at the time the taxpayer makes the payment to the donee organization, the taxpayer receives or expects to receive goods or services in exchange for that payment. * * *

Section 1.170A-13(f)(6), Income Tax Regs., is in keeping with the traditional view that a charitable contribution is one for which the donor has "'no expectation of any quid pro quo". *Hernandez v. Commissioner*, 490 U.S. 680, 690 (1989) (quoting S. Rept. 1622, 83d Cong., 2d Sess. 196 (1954); H. Rept. 1337, 83d Cong., 2d Sess. A44 (1954) (the legislative history defines a gift as a payment "made with no expectation of a financial return commensurate with the amount of the gift")); see also *United States v. Am. Bar Endowment*, 477 U.S. 105, 116, 118 (1985) ("The sine qua non of a charitable contribution is a transfer of money or property without adequate consideration.").

NHF used petitioners' $36,000 payments to pay the premiums on the life insurance policy, $434,509 (or 44 percent of the death benefits) of which petitioners' family trust was entitled to receive as beneficiary.

Petitioners point out that NHF was not required, and did not promise, to use their contributions to pay the premiums on the insurance policy on the life of Mrs. Addis. However, NHF provided consideration for petitioners' payments because, at the time petitioners made payments to NHF, they expected to receive 44 percent of the death benefit under the policy. Petitioners expected NHF to use their $36,000 contributions to pay NHF's portion of the premiums on the life insurance policy in 1997 and 1998. Sec. 1.170A-13(f)(6), Income Tax Regs. Petitioners' expectation that NHF would pay the premiums on the life insurance policy was reasonable because it was in NHF's financial interest to pay premiums on petitioners' life insurance policy in return for a guaranteed death benefit of $557,280.

C. *Whether NHF's Receipts for Petitioners' Payments Comply With Section 170(f)(8) and Section 1.170A-13(f)(6), Income Tax Regs.*

Petitioners contend that NHF's receipts comply with section 170(f)(8) and were contemporaneous written acknowledgments of their contributions. They further contend that the receipts were accurate because they received no benefits in exchange for their payments to NHF. Petitioners' contention fails to take into account the definition of consideration in section 1.170A-13(f)(6), Income Tax Regs. As stated above, under that regulation, a donee organization provides goods or services in consideration for a taxpayer's payment if, at the time the taxpayer makes the payment to the donee organization, the taxpayer receives or expects to receive goods or services in exchange for that payment.

NHF did not state in its receipts that NHF paid premiums for the insurance policy on the life of Mrs. Addis under which petitioners would receive 44 percent of the death benefits. NHF failed to make a good faith estimate of the value of those benefits as required by section 170(f)(8)(B)(iii).

The legislative history accompanying the enactment of section 170(f)(8) states: "Organizations * * * [that provide goods or services in consideration for payments from donors] often do not inform their donors that all or a portion of the amount paid by the donor may not be deductible as a charitable contribution." H. Rept. 103-111, at 783, 785 (1993), 1993-3 C.B. 167, 359, 361. Congress enacted the substantiation requirements of section 170(f)(8) to require charitable organizations that receive quid pro quo contributions, i.e., payments made partly as a contribution and partly in consideration for goods or services provided to the donor by the donee organization, to inform their donors that the deduction under section 170 is limited to the amount by which the payment exceeds the value of goods or services provided by the charity. *Id.*

Petitioners and NHF designed a scheme purporting to provide no benefits to petitioners in exchange (or consideration) for petitioners' payments. However, petitioners received substantial benefits from NHF under the life insurance policy. In the documents structuring this transaction, petitioners and NHF avoided stating any obligation of NHF and made it appear that petitioners made an outright gift to NHF with no quid pro quo. However, petitioners expected, and they told NHF that they expected, NHF to use their contributions for both their and NHF's benefit.

Petitioners and NHF both had incentives to proceed under this scheme; with the pot sweetened by charitable contribution deductions, it was in both parties' interests (1) for NHF to continue to pay the insurance premiums, and (2} for petitioners to continue to make payments to NHF. NHF

would be entitled to the $557,000 death benefit only if it paid the premiums for the life insurance policy. We conclude that the NHF receipts do not comply with the substantiation requirement of section 170(f)(8) and section 1.170A-13(f)(6), Income Tax Regs., because NHF incorrectly stated in the receipts that petitioners received no consideration for their payments.

D. *Consequence of Failure To Comply With Section 170(f)(8)*

Section 170(f)(8) disallows a charitable contribution deduction in circumstances such as these, where the donee organization's contemporaneous written acknowledgment is erroneous and is not a good faith estimate of the value of goods or services it provided, and where the taxpayer unquestioningly and self-servingly uses that erroneous statement to claim a charitable contribution larger than the one to which he or she would be entitled under section 170. Secs. 1.170A-13(f)(7), 1.170A-l(h)(4)(ii), Income Tax Regs. The written acknowledgments by NHF did not meet the requirements of section 170(f)(8) and section 1.170A-13(f)(6), Income Tax Regs. Thus, petitioners may not deduct their contributions to NHF of $36,285 in 1997 and $36,000 in 1998.

To reflect the foregoing,

Decision will be entered for respondent.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed SEP. 21, 2004]

No. 02-73628
IRS No. 6628-00
Central District of California,
Los Angeles

CHARLES H. ADDIS; CINDI ADDIS,
Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent - Appellee.

ORDER

Before: CANBY, NOONAN, and THOMAS, Circuit Judges.

The panel has voted unanimously to deny the petition for rehearing. Judge Thomas has voted to deny petition for rehearing en banc and Judges Canby and Noonan recommended denying the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc, and no active judge has requested a vote whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is DENIED and the petition for rehearing en bans is DENIED.

APPENDIX D

26 U.S.C. §170(f)(8). Charitable, etc., contributions and gifts.

* * * *

(f) Denial of deduction in case of certain contributions of partial interests in property.

* * * *

(8) Substantiation requirement for certain contributions.

(A) General rule. No deduction shall be allowed under subsection (a) for any contribution of $250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organization that meets the requirements of subparagraph (B).

(B) Content of acknowledgment. An acknowledgment meets the requirements of this subparagraph if it includes the following information:

(i) The amount of cash and a description (but not value) of any property other than cash contributed.

(ii) Whether the donee organization provided any goods or services in consideration, in whole or in part, for any property described in clause (i).

(iii) A description and good faith estimate of the value of any goods or services referred to in clause (ii) or, if such goods or services consist solely of intangible religious benefits, a statement to that effect.

For purposes of this subparagraph, the term "intangible religious benefit" means any intangible religious benefit which is provided by an organization organized exclusively for religious purposes and which generally is not sold in a commercial transaction outside the donative context.

(C) Contemporaneous. For purposes of subparagraph (A), an acknowledgment shall be considered to be contemporaneous if the taxpayer obtains the acknowledgment on or before the earlier of

(i) the date on which the taxpayer files a return for the taxable year in which the contribution was made, or

(ii) the due date (including extensions) for filing such return.

(D) Substantiation not required for contributions reported by the donee organization. Subparagraph (A) shall not apply to a contribution if the donee organization files a return, on such form and in accordance with such regulations as the Secretary may prescribe, which includes the information described in subparagraph (B) with respect to the contribution.

(E) Regulations. The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations that may provide that some or all of the requirements of this paragraph do not apply in appropriate cases.

26 C.F.R. §1.170A-1(h)(4). Charitable, etc. contributions and gifts; allowance of deduction.

* * * *

(h) Payment in exchange for consideration.

* * * *

(4) Donee estimates of the value of goods or services may be treated as fair market value.

(i) In general. For purposes of section 170(a), a taxpayer may rely on either a contemporaneous written acknowledgment provided under section 1700(8) and § 1.170A-13(f) or a written disclosure statement provided under section 6115 for the fair market value of any goods or services provided to the taxpayer by the donee organization.

(ii) Exception. A taxpayer may not treat an estimate of the value of goods or services as their fair market value if the taxpayer knows, or has reason to know, that such treatment is unreasonable. For example, if a taxpayer knows, or has reason to know, that there is an error in an estimate provided by an organization described in section 170(c) pertaining to goods or services that have a readily ascertainable value, it is unreasonable for the taxpayer to treat the estimate as the fair market value of the goods or services. Similarly, if a taxpayer is a dealer in the type of goods or services provided in consideration for the taxpayer's payment and knows, or has reason to know, that the estimate is in error, it is unreasonable for the taxpayer to treat the esti-

mate as the fair market value of the goods or services.

26 C.F.R. §1.170A-13(f)(6). Recordkeeping and return requirements for deductions for charitable contributions.

* * * *

(f) Substantiation of charitable contributions of $250 or more.

* * * *

(6) In consideration for. A donee organization provides goods or services in consideration for a taxpayer's payment if, at the time the taxpayer makes the payment to the donee organization, the taxpayer receives or expects to receive goods or services in exchange for that payment. Goods or services a donee organization provides in consideration for a payment by a taxpayer includes goods or services provided in a year other than the year in which the taxpayer makes the payment to the donee organization.